

# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

ReC	PCT/PTC 25 FEB 2005
REC'D 29 JUN 2004	
WIPO	PCT

Applicant's or agent's file reference 483474 NXX/jn		FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416).
International Application No. PCT/NZ2003/000189	International Filing Date (day/month/year) 26 August 2003	Priority Date (day/month/year) 26 August 2002
International Patent Classification (IPC) or national classification and IPC Int. Cl. <sup>7</sup> A23C 9/00, 19/086, B65B 1/00		
Applicant [ NEW ZEALAND DAIRY BOARD et al ] <i>Fonterra Co-operative Group Limited</i>		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 4 sheets, including this cover sheet.  
☒ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 14 sheet(s).

3. This report contains indications relating to the following items:

- |      |   |
|------|---|
| I    | <input checked="" type="checkbox"/> Basis of the report   |
| II   | <input type="checkbox"/> Priority   |
| III  | <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability   |
| IV   | <input type="checkbox"/> Lack of unity of invention   |
| V    | <input checked="" type="checkbox"/> Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| VI   | <input type="checkbox"/> Certain documents cited  |
| VII  | <input type="checkbox"/> Certain defects in the international application   |
| VIII | <input type="checkbox"/> Certain observations on the international application  |

Date of submission of the demand 22 March 2004	Date of completion of the report 23 June 2004
Name and mailing address of the IPEA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaaustralia.gov.au Facsimile No. (02) 6285 3929	Authorized Officer  JANE MCHENRY Telephone No. (02) 6283 2091

**I. Basis of the report**

1. With regard to the elements of the international application:\*
- ☐ the international application as originally filed.
- ☒ the description, pages 1-4, 7, 11 and 13-33 as originally filed,  
pages , filed with the demand,  
pages 5, 6, 8-10 and 12 received on 8 June 2004 with the letter of 8 June 2004
- ☒ the claims, pages , as originally filed,  
pages , as amended (together with any statement) under Article 19,  
pages , filed with the demand,  
pages 34-41 received on 8 June 2004 with the letter of 8 June 2004
- ☐ the drawings, pages , as originally filed,  
pages , filed with the demand,  
pages , received on with the letter of
- ☐ the sequence listing part of the description:  
pages , as originally filed  
pages , filed with the demand  
pages , received on with the letter of
2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.  
These elements were available or furnished to this Authority in the following language which is:
- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).
3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:
- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished
4. ☒ The amendments have resulted in the cancellation of:
- ☐ the description, pages
- ☒ the claims, Nos. 59-64
- ☐ the drawings, sheets/fig.
5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\*

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. Statement**

Novelty (N)	Claims 1-58	YES
	Claims	NO
Inventive step (IS)	Claims 1-58	YES
	Claims	NO
Industrial applicability (IA)	Claims 1-58	YES
	Claims	NO

**2. Citations and explanations (Rule 70.7)**

From the applicants response it appears the invention lies in the production of a pre-mix that can be used in the production of a wide variety of food products. The base of the pre-mix comprises milk protein concentrate (MPC) in combination with cream powder, powdered vegetable fat or combinations of both of these. The advance over the prior art is that this base pre-mix can be combined with a potable solvent and simultaneously mixed and heated to create an emulsion and then a gel, which can then be flavoured to make many different products.

The following documents from the International Search Report are referred to in this report:

D1 = US 5935633

D2 = US 4497841

D3 = US 4388337

D4 = US 5736181

**NOVELTY & INVENTIVE STEP**

D1 discloses a dry powdered cheese composition. The cheese composition comprises a dehydrated cheese powder, cold-water swelling starch, calcium, salts, flavouring agents and vegetable shortening. The composition can be reconstituted with water to produce a cheese product. The flavouring agents may include cream powder or powdered butterfat (see col 6 lines 15-19 and 34-37 and examples). The applicant asserts that a person skilled in the art would readily understand that a dry powdered cheese is not a MPC as it does not possess the same properties and characteristics. Therefore as the composition does not comprise using MPC the claims are considered novel and inventive in light of this document.

D2 discloses a low calorie dessert mix that comprises butterfat, whey protein concentrate and other non-fat milk solids, a sweetener and stabiliser. These are combined and dehydrated to form a powdered pre-mix. The composition may comprise dry buttermilk. The pre-mix can be combined with water, cream or milk to for the liquid mixture. The buttermilk contains low fat and approximately 35.9% protein (col 7 lines 31-32). Thus the buttermilk does not have the same properties as MPC that comprises at least 40% protein content. Therefore as the composition does not comprise using MPC the claims are considered novel and inventive in light of this document.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/NZ2003/000189

**Supplemental Box**

(To-be used when the space in any of the preceding boxes is not sufficient)

**Continuation of V**

**NOVELTY & INVENTIVE STEP**

D3 and D4 both disclose dry dairy compositions for making desserts or egg royale respectively. Neither of these documents discloses the use of MPC in combination with cream powder or vegetable fat powder or a combination of both. Therefore the claims are considered novel and inventive in light of these documents.